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David Livingston, Murtazah Ghaznawi (erroneously named  
as Ghulam Ghaznawi), Aaron Smith, Kevin Bollinger and  
Carl Cruz (erroneously named as Corporal Cruz)

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

**RICHARD ANDREW TARANTINO, JR.,**

Plaintiff,

vs.

**CITY OF CONCORD; DAVID LIVINGSTON,**  
individually and in his official capacity as CHIEF  
OF POLICE for CITY OF CONCORD;  
**GHULAM GHAZNAWI,** individually and in his  
official capacity as a police officer; **AARON**  
**SMITH,** individually and in his official capacity  
as a police officer; **KEVIN BOLLINGER,**  
individually and in his official capacity as a  
police officer; **Corporal CRUZ,** individually and  
in his official capacity as a police officer; and  
**DOES 1 – 40,** inclusive,

Defendants.

Case No. C12-00579 (JCS)

**UPDATED CASE MANAGEMENT  
STATEMENT AND PROPOSED ORDER**

**Date: December 14, 2012**

**Time: 9:30 p.m.**

**Court: Courtroom G, 15<sup>th</sup> Floor**

**Judge: Magistrate Judge Joseph C. Spero**

Defendants City of Concord, David Livingston, Murtazah Ghaznawi (erroneously named as  
Ghulam Ghaznawi), Aaron Smith, Kevin Bollinger and Carl Cruz hereby submit this separate  
UPDATED CASE MANAGEMENT STATEMENT. As, Plaintiff appears *pro se* in this action,  
Defendants have submitted a Separate CASE MANAGEMENT STATEMENT.

1           **1.       Jurisdiction and Service.**

2           Plaintiff contends that this court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331,  
3 1343, 42 U.S.C. §1983, 28 U.S.C. §§2201, 2002, and 28 U.S.C. §1367. Defendants do not dispute  
4 that the court has jurisdiction of this case.

5           All parties have been served and Defendants have filed an answer to the complaint.

6           **2.       Facts.**

7               **A.       Plaintiff's contentions.**

8           As asserted in his complaint, Plaintiff contends that his case arises out of the February 6, 2008  
9 unlawful detention, assault and battery, arrest of himself by Concord Police Officers Ghaznawi,  
10 Smith and Bollinger. Plaintiff contends on this date he was lawfully driving his 1993 Ford Bronco  
11 when he was stopped by Officer Ghaznawi without a warrant or probable cause for the stop. Plaintiff  
12 contends that he is not legally required to display license plates on his vehicle nor is he required to  
13 possess a California's State Driver's License as he does not drive his vehicle in a commercial  
14 capacity.

15           Plaintiff refused to exit his vehicle after being instructed to do so by the officers; Plaintiff  
16 contends that he was fearful for his personal safety at the time. Plaintiff contends that Officer Smith  
17 then broke the window of his vehicle with his baton, which caused him to exit his vehicle. Plaintiff  
18 alleges that he raised his arms in a defensive manner to avoid being hit by a baton and that the  
19 officers yelled at him to raise his arms and get on the ground. Plaintiff alleges that he was paralyzed  
20 and too afraid to move. Plaintiff states at this time he was tased twice by the officers. When he fell  
21 to the ground, Plaintiff contends that he sustained repeated body blows from the officers, which  
22 caused him physical injury. Plaintiff contends that the officers were also verbally abusive and  
23 accused him of being under the influence of drugs and/or alcohol.

24           Plaintiff contends that he was taken to the hospital, and subsequently arrested and released at  
25 the Concord jail. He also contends that his vehicle was unlawfully towed and his cell phone  
26 unlawfully taken from his possession.

27           Plaintiff was tried and convicted in criminal court but contends that he did not receive a fair  
28 trial. He appealed the criminal judgment while incarcerated but alleges his appeal was not successful

1 due the incompetence of his attorney.

2 **B. Defendants' Contentions.**

3 This claim arises out of a February 6, 2008 traffic stop, in which Plaintiff was stopped by  
4 Concord Police Officer Ghaznawi for failure to properly display a license plate on his vehicle.

5 After he was stopped, Plaintiff refused to cooperate with Officer Ghaznawi and refused to exit  
6 his vehicle or roll down his window. When Plaintiff began to reach into his console and pulled out a  
7 bag, Officer Ghaznawi began to be fearful for his personal safety. Officer Ghaznawi ordered Plaintiff  
8 to exit the vehicle, which Plaintiff refused to do. Officer Ghaznawi then instructed Officer Smith,  
9 who had arrived with Officer Bollinger as backup, to break the vehicle's window if Plaintiff reached  
10 again in between the driver's seat and passenger's seat. Officer Ghaznawi also told Plaintiff to show  
11 his hands to the officer; Plaintiff refused to do so and instead began screaming obscenities and said  
12 something similar to "I'm going to get you!" Officer Smith subsequently broke the window with his  
13 baton and Officer Ghaznawi reached in and opened the door.

14 Plaintiff then pulled at Officer Smith's arm and swung a closed fist towards Officer Smith's  
15 head. Plaintiff exited the vehicle, clenched his fists and raised them to shoulder level, and positioned  
16 his feet in a fighting stance. Officer Ghaznawi pulled out his Taser and shot at Plaintiff's center mass  
17 of body when it appeared that Plaintiff was moving towards Officer Smith to attack him. Two darts  
18 from the Taser stuck to Plaintiff's body and he fell on his left knee. Officer Ghaznawi then ordered  
19 Plaintiff to lie down on the ground, which he refused. Officer Ghaznawi waited 5 seconds and then  
20 shot his Taser again. Plaintiff still refused to lie down. Officers Smith and Bollinger then grabbed  
21 Plaintiff's arms and placed him on his stomach. Officer Smith also applied two distraction blows to  
22 Plaintiff's lower back. During his struggle with Officers Smith and Bollinger, Plaintiff hit his head  
23 on the ground and an area above his left eye began to bleed. Tarantino was subsequently transported  
24 to John Muir Medical campus and arrested by Officer Ghaznawi. When he was medically released,  
25 Officer Ghaznawi transported him to County jail for violations of Penal Code Sections 243(b) and  
26 148(a) (1).

27 As a result of his arrest on February 6, 2008, Plaintiff was subsequently tried and convicted by  
28 a jury on April 16, 2009 for violations of Penal Code Sections 240/241(c) "assault against a peace

officer,” 148(a) (1) “resisting arrest,” and Vehicle Code Section 14601.1(a) “driving without a license.” Although Plaintiff filed an appeal, the criminal conviction was not overturned.

### 3. Legal Issues.

#### A. According to Plaintiff:

1. Whether Defendants’ conduct violated Plaintiff’s right under the 4<sup>th</sup> Amendment to be free from unreasonable seizures. (42 U.S.C. §1983).

2. Whether Defendants’ conduct was without probable cause and violated Plaintiff’s right under the 4<sup>th</sup> Amendment to be free from unlawful seizure (detention). (42 U.S.C. §1983).

3. Whether Defendants’ conduct was without probable cause and violated Plaintiff’s right under the 4<sup>th</sup> Amendment to be free from unlawful seizure (arrest). (42 U.S.C. §1983).

4. Whether Defendants’ conduct violated Plaintiff’s right as provided under the 4<sup>th</sup> Amendment to be free from excessive force against him. (42 U.S.C. §1983).

5. Whether Defendants’ conduct, under color of law, deprived Plaintiff of immediate necessary medical care in violation of his rights under the due process clause of the 14<sup>th</sup> Amendment. (42 U.S.C. §1983).

6. Whether Defendants conspired to violate Plaintiff’s federal civil rights to be free from unreasonable seizures and excessive and/or arbitrary force. (42 U.S.C. §1983).

7. Whether Defendants’ conduct, under color of law, caused injury to Plaintiff by subjecting Plaintiff to excessive force thereby depriving Plaintiff of the right to be free from unreasonable searches and seizures as guaranteed by the 4<sup>th</sup> and 14<sup>th</sup> Amendments; the right not to be deprived of life or liberty without due process of law as guaranteed by the 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments; and the right to be free from interference within the zone of privacy as protected by the 4<sup>th</sup> and 9<sup>th</sup> Amendments. (42 U.S.C. §1983).

8. Whether high ranking Concord officials, including defendant David Livingston approved, ratified, condoned, encouraged, sought to cover up, and/or tacitly authorized the continuing pattern and practice of misconduct, civil rights violations and violation of Plaintiff’s Constitutional rights as guaranteed by the 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments, the right to equal protection of the laws as guaranteed by the 14<sup>th</sup> Amendment, and the right to be free from interference within the zone of

1 privacy as protected by the 14<sup>th</sup> and 9<sup>th</sup> Amendments by defendant officers. (Monell, 42 U.S.C.  
2 §1983.)

3 9. Whether Defendants' conduct was extreme, unreasonable and outrageous, and caused  
4 Plaintiff to suffer extreme emotional distress.

5 10. Whether Defendants' conduct constituted assault and battery against Plaintiff.

6 **B. According to Defendants:**

7 1. Whether Plaintiff's complaint is barred by the two (2) year state statute of limitations  
8 under California Code of Civil Procedure Section 335.1. Plaintiff was arrested on February 6, 2008  
9 and convicted on April 16, 2009. The instant complaint was not filed until February 6, 2012, which  
10 was four (4) years after his arrest and almost three (3) years after his conviction.

11 2. Whether Plaintiff's claims based upon a state cause of action (assault and battery,  
12 emotional distress and conspiracy) are time barred as Plaintiff failed to bring the action within six (6)  
13 months of the denial of his claim (Cal. Government Code Section 945.6).

14 3. Whether Plaintiff's causes of action based upon alleged violations of 42 U.S.C. §1983  
15 are barred under Heck v. Humphrey, (1994) 512 U.S. 477, due to the fact that Plaintiff's conviction  
16 of arrest has not been overturned on appeal.

17 4. Whether Officer Ghuznawi had probable cause to believe that Plaintiff had committed  
18 a traffic violation, justifying his subsequent detention. (Delaware v. Prouse (1979) 440 U.S. 648,  
19 659).

20 5. Whether defendant officers lawfully ordered Plaintiff to step out of his vehicle during  
21 the course of the traffic stop in question. (Pennsylvania v. Mimms (1977) 434 U.S. 106, 111).

22 6. Whether the detention and subsequent arrest of Plaintiff violated Plaintiff's 4<sup>th</sup>  
23 Amendment rights. (Carroll v. U.S. (1925) 267 U.S. 132; Muehler v. Mena (2005) 544 U.S. 93;  
24 Atwater v. Lago Vista (2001) 532 U.S. 318, 354).

25 7. Whether the use of force used by any defendant in the subject arrest was objectively  
26 reasonable under the 4<sup>th</sup> Amendment. (Graham v. Connor (1989) 490 U.S. 386, 397.)

27 8. Whether the City of Concord can be held liable under 42 U.S.C. §1983 for the alleged  
28 conduct of the individual police officers. (Monell v. Department of Social Services of New York

(1978) 436 U.S. 658; Oklahoma City v. Tuttle (1985) 471 U.S. 808, 823; Trevino v. Gates (9<sup>th</sup> Cir. 1996) 99 F.3d 911, 918.)

9. Whether the individual defendant police officers are entitled to qualified immunity. (Anderson v. Creighton (1990) 483 U.S. 635, 638; Saucier v. Katz (2001) 533 U.S. 194; Pearson v. Callahan (2009) 129 S. Court 808.)

#### 4. Motions.

Plaintiff has indicated he intends on filing for a motion for leave to file an amended complaint pursuant to FRCP 15(2). He has also indicated to the Court at both the September 14, 2012 and November 9, 2012 Case Management Conferences that he was seeking to obtain legal counsel in this case. As of the current date, Defendants have not received any notification that plaintiff has retained an attorney.

Defendants intend on filing a motion for summary judgment on the issue of liability against the individual Defendants, based upon but not limited to the statute of limitations issues, qualified immunity, and the rationale that the Section 1983 cause of action is barred by the Heck v. Humphrey ruling. Defendants may also file motion to bifurcate the Monell claim pending the ruling on the motion for summary judgment on the underlying liability issues.

Defendants shall also seek to exclude plaintiff's evidence on any motions, at a hearing or at trial based upon the fact that plaintiff has failed to comply with the Court order to disclose evidence in compliance with Rule 26. (See Hoffman v. Construction Protective Services, Inc. (9<sup>th</sup> Cir. 2008) 541 F3d 117, 1179).

#### 5. Amendment of Pleadings.

Plaintiff has indicated he may wish to file an amended complaint after retention of counsel. Defendants do not anticipate any amendments to the pleadings.

#### 6. Evidence Preservation.

Plaintiff claims he has taken all steps necessary to preserve evidence related to the issues. Defendants have preserved all police records that were still in existence at the time of service of the subject complaint, which occurred in 2012. It should be noted that pursuant to Concord Police Department policy, dispatch tapes typically are retained for six (6) months after which they are taped



1 over and re-used. Consistent with this policy, the dispatch tapes for the February 6, 2008 arrest are  
2 no longer available.

3 **7. Disclosures.**

4 In compliance with the Court's Order issued at the November 9, 2012 Case Management  
5 Conference, Defendants submitted its Rule 26 disclosure to plaintiff on November 16, 2012. As of  
6 the current date, Defendants have not received any disclosure document from plaintiff.

7 **8. Discovery.**

8 No discovery has been propounded by either party. In Plaintiff's previous CASE  
9 MANAGEMENT STATEMENT, Plaintiff indicated he would seek to expand the number of  
10 interrogatories from 25 to 50; seek any and all City police general orders and training bulletins in  
11 effect on February 6, 2008 relating to the supervision and discipline of Concord police officers, the  
12 assignment of officers, making detentions/arrests; using force, using deadly force, providing medical  
13 care to injured persons, training related to federal law, specifically U.S.C. 18, §31 and U.S.C. 49,  
14 state codes, U.S. Supreme Court rulings related to "Right to Travel." Plaintiff indicated he also will  
15 seek production of the police investigation files containing the subject incident, including any police  
16 internal affairs records, and production of Defendants' personnel records, including but not limited to  
17 pre-employment background checks, applications, tests and citizen complaints alleging excessive  
18 force, verbal threats, unlawful detention/arrest and fabrication of police records, training records  
19 concerning, making detention/arrests, the use of force, deadly force and nonlethal weapons (such as  
20 taser, baton, chemical spray).

21 Defendants anticipate taking Plaintiff's deposition, propounding interrogatories and a request  
22 for production of documents in anticipation of filing a motion for summary judgment.

23 As plaintiff has failed to comply with the Court's order to disclose documents by November  
24 16, 2012, defendants will seek to exclude plaintiff's evidence per FRCP 37.

25 **9. Class Actions.**

26 This is not a class action filing.

27 **10. Related Cases.**

28 There are no related cases.

1           **11. Relief.**

2           Plaintiff prays for general damages in the amount of \$2.5 million, special damages, punitive  
3 damages and attorneys' fees. Plaintiff is also seeking injunctive relief.

4           **12. Settlement and ADR.**

5           Plaintiff believes this case may benefit from a referral to alternative dispute resolution.  
6 Plaintiff feels that a referral to mediation is appropriate after discovery has commenced but prior to  
7 the disclosure of expert witnesses.

8           Defendants do not believe that settlement or ADR is appropriate in this case as the statute of  
9 limitations and the Heck v. Humphrey ruling are dispositive in this case.

10          **13. Consent to Magistrate Judge For All Purposes.**

11          This case has been assigned to Honorable Joseph C. Spero pursuant to the consent of both  
12 parties.

13          **14. Other References**

14          Not applicable.

15          **15. Narrowing of Issues.**

16          Defendants contend that the issues will be significantly narrowed or the entire complaint  
17 dismissed as a whole based upon its pre-trial motions.

18          **16. Expedited Trial Procedure.**

19          Not applicable.

20          **17. Scheduling.**

21          The parties anticipate engaging in a discovery plan, which would include the depositions of  
22 Plaintiff, the Defendant officers, and written discovery.

23          **18. Trial.**

24          Plaintiff feels that the length of trial by jury will be approximately 5-7 days. In the event  
25 Defendants' pre-trial motions are unsuccessful in dismissing the case, Defendants anticipate that trial  
26 should last 4-5 days.



1           **19. Disclosure of Non-party Interested Entities or Persons.**

2           Not applicable.

3           **20. Other**

4           Not applicable.

5           Dated: December 7, 2012

MARK S. COON  
City Attorney

7           By:



MARGARET KOTZEBUE  
Senior Assistant City Attorney  
Attorneys for Defendant City of Concord, David  
Livingston, Murtazah Ghaznawi, Aaron Smith,  
Kevin Bollinger and Carl Cruz

**CASE MANAGEMENT ORDER**

The above CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

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HONORABLE JOSPEH C. SPERO  
UNITED STATES DISTRICT JUDGE